2015 WL 1568692 (Ind.App.) (Appellate Brief)
Court of Appeals of Indiana.

Kimball Rustin ROY SCARR, Appellant,
v.
JPMORGAN CHASE BANK NATIONAL ASSOCIATION, Appellee(s).

No. 21A01-1411-MF-466.
January 20, 2015.

Appeal from the Fayette Superior Court
Court Case No: 21D01-1312-MF-0873
The Honorable Gregory A. Horn, Special Judge

Brief of Appellant Kimball Rustin Roy Scarr in Pro SE

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***1 Issues Presented for Review:**

In medius res, whether:

1. Appellee JPMorgan Chase Bank National Association, “Chase” Chase lost his standing and right to foreclose after Chase applied for, received payment and transferred ownership of the alleged FHA insured loan, “HUD” loan, of Appellant Kimball Rustin Roy Scan “Scanrr” to Secretary of Housing and Urban Development, “HUD” under the Distressed Asset Sale Program “DASP,” before Final Summary Judgment:

a. Chase did not enjoin parties necessary to the action.

b. Chase is not a real party of interest at time of Summary Judgment,

c. Chase should have notified either the Court or Scan at or prior to Summary Judgment it of its change of status.

d. Chase materially misled luci causa the Court to obtain final judgment against Scan.

2. The Court exceeded its discretion under Ind. Trial Rule 56 AppellantApp.Vol.09C,Ex. 13 granting Final Judgment in favor of Chase:

a. Chase's Claims of material facts were adequately specifically plead considering the obviously divergent nature of the pleadings to its evidence.

b. Chase's originating claims and pleadings came to the standard of fair notice under the pleadings standards of the Indiana Court System, or were misrepresentations to the Court;

c. Chase failed to enter an original note into evidence supporting its claims.

d. Court prejudiced Scarr denying his Motion for Continuance and Discovery.

***2** e. The Court prejudiced Scan by not granting discovery orders against Chase, and whether Chase improperly objected to discovery.

f. The Court prejudiced Scarr by failing to "Swear In" Scarr in at both Summary Judgment Hearing and on T.R.56 AppellantApp.Vol.09C,Ex.13 before soliciting testimony from Scan.

g. The Court made an error and exceeded its discretion ruling to strike Scan Exhibit X and subsequent Exhibit X amended.

h. Scan rescinded on 29 August 2008 the "Mortgage".

i. The mortgage document "Mortgage" of 26 August 2008 Scan made to SurePoint Lending abn First Residential Mortgage Network, Inc. "SurePoint" is not a valid and enforceable mortgage security instrument against Scarr property,

j. SurePoint on 02 September 2008 granted Scan an act of forbearance by issuing of the funds of $96,222.00 without a note.

k. Chase acquired an incomplete mortgage loan from SurePoint.

1. The Compliance and the Compliance/Errors and Omissions Agreement contracts were not still in effect after transfer of loan to Chase.

m. "Mortgage" of 26 August 2008 is bifurcated from the "Note" of 26 November 2008.

n. Payments Vera Scan were bifurcated any future "Note"; were erroneously induced and paid on an incomplete and rescinded loan; were not applied to principle but should have been.

o. The "Note" is not a negotiable instrument.

p. The "Note" is not a valid or enforceable contract against Scan.

***3** q. Scarr gratuitously granted the "Note" to SurePoint.

r. A complete "Mortgage loan" does not exist obligating Scarr to pay Chase.

s. Chase is not an owner or “Holder” the “Note”, and whether Chase had right/power to enforce the “Note” at time of Summary Judgment.

t. Chase should be precluded from obtaining Foreclosure on the HUD loan of Scarr as the origination of the mortgage loan in controversy and subsequent acts during pendency of Foreclosure violated the Truth In Lending Act, RESPA and Regulations of HUD.

u. Chase is prevented from foreclosure by estoppel by Laches Failure as SurePoint and /or or Chase failed to complete legal loan in a timely manner.

v. The Equitable Estoppel and Invited Error of both SurePoint and Chase preclude foreclosure.

w. Chase is not a Bona Fide Mortgagee.

x. Court exceeded its authority by granting Chase an equitable “Mortgage loan”.

y. Chase actions amount to Predatory Lending Practices.

z. Inequitable conduct and unclean hands by Chase prejudiced the due process rights of Scarr to have his day in Court.

aa. Chase has UNCLEAN HANDS cannot foreclose as he is not free of inequitable conduct as to the controversy.

***4 Statement of Case**

A. Chase, brought forth a case of foreclosure on real estate against Appellant Scarr of four material facts in its Complaint on Note and to Foreclose Real Estate of 16 December 2008 and consistently through its Summary Judgment motion on 30 July 2014, namely:

a. Chase owned Scarr's mortgage loan, wherein;

b. The “Mortgage' of 26 August 2008 Scarr made with loan originator SurePoint had been assigned to Chase by MERS on 16 September 2013;

c. The Note of 26 August 2008 Scarr made with loan originator SurePoint had been endorsed in blank as a bearer instrument to Chase;

d. Scarred owed Chase a sum of money based on the promise to pay of the Note.

e. Scarr was in in admitted default as payments had stopped after 01 June 2013 and Scarr refused to make payments.

f. Chase claimed a Prima Fascia Case of Foreclosure.

B. Scarr's most basic case was:

a. There were two transactions: one for a “Mortgage” of 26 August 2008 and a second for a “Note” of 26 November 2008.

b. The two documents were irreparably separated by dates, payment and had been separated by assignments at origination and twice more later.

c. The “Mortgage” was invalid, as it did not have a note evidencing a promise to pay attached or keyed to it to create a loan.

d. The “Note” was neither a negotiable instrument nor a valid contract.

e. That Chase was neither a bona fide purchaser of a mortgage loan nor bona fide mortgagee.

***5** f. That Scarr as a consumer had been materially misled as to terms, funding accounting and even as the existence of a loan.

Discovery and Chase Claim of Ratification Final Judgment,

C. On 03 January 2014 Court Ordered a Settlement Conference, including;

a. Scarr to prepare a **financial** statement and modification package.

b. Chase to provide basic discovery to Scarr.

D. On 13 March 2014 the Settlement Conference was held.

a. Scarr pre-submitted all discovery materials ordered by the Court to Chase.

b. Chase brought only a statement of total amount claimed Scarr owed.

c. Chase did not comply with discovery Ordered by the Court.

E. On 17 March 2014 Scarr made motion to the Court to Reset the Settlement Conference with Affidavit, and a Motion for Production of Documents and Discovery of Facts.

F. On 01 April 2014 Court Orders Denying Scarr motion for Reset of Settlement Conference.

G. On 04 April 2014 Scarr filed with the Court a Motion to Reconsider and Rebuttal and Brief Reconsider the Order of 01 April 2014.

H. On 09 April 2014 Special Judge Horn Orders Denying Scarr Motion to Reconsider.

I. On 15 April attorney Leanne Titus files Appearance for Chase, and Scarr receives a incomplete mixed up package of discovery from Chase of loan closing documents, other aspects of discovery are objected to in a Plaintiff's Response to Defendant's Request for Production of Documents dated 14 April 2014 by Chase, wherein each objection is, “Chase Objects to this Request as irrelevant and not reasonably calculated to lead to the ***6** discovery of admissible evidence”, and further objects to Scar's Discovery Request as vague, ambiguous and confusing as written.”

J. On 24 April 2014 Chase makes Motion for Summary Judgment:

a. 29 April 2014 Court Orders Scheduling Requirements.

b. 05 May 2014 Court Sets Summary Judgment for Hearing on 30 July 2014.

K. On 12 May 2014 Plaintiff attorney Leanne Titus and Scarr in phone conversation objects to Scarr's discovery requests: Chase has a mortgage, note and an accounting of default, thereby, Chase nor Scarr need anything more. Scarr states to Ms. Titus that

"perhaps those documents are Chase's Case but Scarr is entitled to his own case and discovery of evidence that supports that." AppellantApp.Vol.08A,Motion22May2014,pa.3,para.2

L. On 22 May 2014 Scarr files a Motion for Production of Documents and Discovery of Facts asking the Court to compel by order discovery of Chase to Scarr, and Scarr Moves for Relief up until Summary Judgment Hearing to Add Supplemental Defense and Information to his response to summary judgment due to the intractable stance on discovery by Chase.

M. On 27 May 2014 Court Denys Scarr motion for discovery of Chase, "the Court finds that the Court does not get involved in discovery matters at this stage of the proceedings..."

The Court also Denied Scarr Motion as to supplemental information.

N. On 06 June 2014 Chase files a Notice to Court it has responded to discovery but continues discovery objections.

O. On 26 June 2014 Scarr files Response AppellantApp.Vol.02 to Summary Judgment.

P. On 27 June 2014 Scarr files and submits Interrogatories to Chase.

***7** Q. On 15 July Chase files Reply to Scarr Response to Summary Judgment, Chase pleads new claim "Ratification" of the loan, and moves to strike Scarr Affidavit X.

R. On 15 July 2014 Chase submits verified Answers to Scarr Interrogatories, with general objection to each question submitted by Scarr, per Chase expert Ying Pan, AppellantApp.Vol.05,Ex.II,pa. 1-8:

a. Answer to question 1: "Plaintiff States that it is the holder of the subject Note executed by Kimball Rustin Roy Scarr (the "Defendant") with the maturity date of September 01, 2038.

b. Answer to question 2: "Plaintiff states that it has not asserted that it acquired a mature promissory note. Plaintiff is the holder of the of the subject Note executed by the Defendant with the maturity date of September 1, 2038 and the Note was transferred to Plaintiff by a specific endorsement from the loan originator, SurePoint...."

c. Answer to question 3: "Plaintiff became the holder of the subject Note prior to the filing of this foreclosure action."

d. Answer to question 4: "Plaintiff is the owner of the subject Note."

e. Answer to question 5: "Plaintiff it's the owner of the subject Note."

S. On 16 July 2014 Chase gave Notice to the Court response to Scarr Interrogatories and No Outstanding Discovery.

T. On 16 July 2014 Scarr Moved the Court to Amend his Pleadings to:

a. Substitute an amended 'Exhibit X amended' AppellantApp.Vol.03,Ex.amendX for Exhibit X AppellantApp.Vol.02,Ex.X timely filed with a Response to Summary Judgment, in clarification.

***8** b. Correct a typographic error created in mislabeling of the Exhibits L and U previously filed with his Answer to Complaint of 09 May 2014.

U. On 18 July 2014 Court Ordered that Chase had up until 25 July 2014 to file objections to the Motion to Amend Pleadings of 16 July 2014.

V. On 28 July 2014 Scarr filed Motion for Continuation of Summary Judgment Hearing and related Motions based on newly discovered evidence and to add additional exhibits on newly discovered material evidence, and to obtain further discovery of facts.

W. On 30 July 2014, Court ruled against Scarr Motions, Order Denying Motion for Continuance and Related Motions.

Summary Hearing Judgment of 30 July 2014, and Certified Final Judgment of 01 August 2014:

X. Summary Judgment Hearing on 30 July 2014,:

a. Chase recited its position and facts of a Prima Fascia Case of Foreclosure:

Chase claimed to hold a bearer instrument in the form of a Note; Chase was assigned a mortgage; Scarr had admitted default; Chase's certified accounting of debt was argued as true and correct; Scarr had received benefit of the funds he received from the transaction of 26 August 2008; and further Scarr had ratified the loan of Chase's claim by making payments, and Chase should recover damages and foreclose Scarr home.

b. Chase claimed Scarr was subject to the compliance agreements Scarr signed with SurePoint as to the 26 August 2008 “Mortgage”, Scarr Exhibits M and N AppellantApp.Vol. 01,Ex.M-N.

***9** c. Chase made argument that Scarr had received benefit of the money of said loan with SurePoint, as below referring:

d. Chase should be granted Summary Judgment.

e. The Court did not swear in Scarr, nor did Scarr ask to be sworn.

f. Court ruled in favor of all Chase motions and ruled to strike Scarr Exhibit X, and generally found Scarr evidence and pleadings unpersuasive accepting Chase's arguments fully and ruled **Final Judgment for Chase on 01 August 2014.**

Ind, Trial Rule 59 Motion, to Summary Judgment, and Ruling Denied:

Y. Scarr filed on 28 August 2014 a T.R.59 Motion Appellant App. Vol. 05. Scarr filed newly discovered evidence supporting Scarr's exhibit X and overall Case. The belated discovery was caused by:

a. The closing company FCA had delayed though continually promising Scarr's discovery. FCA release information too late for Summary Judgment, including: answers to Interrogatories; all closing documents of both 26 August and November 2008 transactions, and: closing instructions were verified and provided to Scarr in discovery from FCA.

b. Vera Scarr had found various Faxes as to the loan origination misfiled with her bank payment records for the loan.

Z. T.R.59 Verified New Evidence, AppellantApp.Vol.05,Ex. JJa-MMb,

i. Exhibit JJa - Closing Documents for 26 August 2008 Closing, Affidavit KK and KKa List of Jane Beaver;

***10** ii. Exhibit JJb - Closing Documents for 26 November 2008 Closing, Affidavit KK and KK aList of Jane Beaver;

iii. Exhibit KK - Affidavit Jane Beaver, List of Closing Documents;

iv. Exhibit KKa - List of closing documents for 26 August 2008 Closing, of Jane Beaver;

v. Exhibit KKb - List of closing documents for 26 November 2008 Closing, of Jane Beaver;

vi. Exhibit LL - All Closing Instructions;

vii. Exhibit MM- Affidavit Jane Beaver, for Exhibits MMa and MMb;

viii. Exhibit MMa- Closing Final Disbursement Report 04 September 2008, and;

ix. Exhibit MMb- Closing 26 August 2008 RESPA, HUD-1.

Misfiled records found and verified by Vera Scarr AppellantApp. Vol. 05, Ex.HHa-HHg.

x. Scarr's Exhibit HH, Affidavit of Vera Scarr, 27 August 2014, including:

xi. Exhibit HHa FAX, 04 August 2008;

xii. Exhibit HHb FAX, 08 August 2008;

xiii. Exhibit HHc FAX, 13 August 2008;

xiv. Exhibit HHd FAX, 13 August 2008;

xv. Exhibit HHe FAX, 20 August 2008;

xvi. Exhibt HHf FAX, 29 August 2008, and;

xvii. Exhibit HHg Notice of Right to Cancel 29 August 2008 signed by Scanrr mailed by Vera Scarr to SurePoint.

***11** b. The evidence in the T.R.59 AppellantApp.Vol.09C,Ex.13 proved the mortgage transaction of 26 August 2008, and the Note transaction of 26 November 2008 were separate transactions:

Jane Beaver, owner of the closing company, answers to defense interrogatories, AppellantApp. Vol.05,Ex.II,pa.6, answer to question 22 that the 26 August 2008 “Mortgage” and the 26 November 2008 “Note” between SurePoint and Scanrr kept as separate transactions with the closing company.

c. Vera Scarr, verified in her Affidavit, Exhibit HH,

AppellantApp.Vol.05,Ex.HHpa.1, that she found various faxes that she had forwarded for Scarr to SurePoint.

d. On 09 October 2014, at the T. R. 59 Motion Hearing the Court did not swear the Scarr nor did Scarr request to be sworn.

e. Appellee Chase attorney at the T.R. 59 hearing restated Compliant pleadings and recited the same material facts as he claimed in the hearing on the underlying Summary Judgment hearing of 30 July 2014.

f. In ruling on 13 October 2014, on the T.R. 59 Motion the Court found Scarr's new facts and evidence unpersuasive and confirmed its original ruling of 01 August 2014 from the Summary Judgment.

Ind. Trial Rule 60 Motion:

AA. Scarr received a notification his loan had been sold, Scarr Exhibits NN-TT, AppellantApp.Vol.06,Ex.NN-TT.

***12** BB. United States Congressman Messer filed a Congressional Freedom of Information Act request on behalf of Scarr, herein after "FOIA", Scarr Exhibit UU, resulting in new evidence, AppellantApp. Vol.06,Ex.UU-YY, including:

a. Defense Exhibit NN -Letter Chase Bank, 14 August 2014

b. Defense Exhibit 00 - Letter from Chase Bank, 26 August 2014.

c. Defense Exhibit PP - Notification of Sale of Ownership of Mortgage Loan, Caliber Home Loans, 27 August 2014.

d. Defense Exhibit QQ - Plaintiff's Statement in Opposition to Defendant's TR59 Motion, 12 September 2014

e. Defense Exhibit RR - Notice of Sale of Ownership of Mortgage Loan, Caliber. Home Loans, 15 September 2014.

f. Defense Exhibit SS - Loan Statement, Chase, 16 September 2014.

g. Defense Exhibit TT - Notification of Servicing Transfer Chase, 16 September 2014, and:

Referring to Exhibit WW as insurance origination AppellantApp.Vol.06,Ex.WW, pa.1 and,

a. pa.3 HUD under "Loan Processing Informatio" line entitled, "Endorsement Package", received the FHA insurance endorsement package from SurePoint on 09 September 2008 with Scarr's initial premium payment of $2,422.50;

b. pa.3 under "Loan Processing Information" line entitled "Total Upfront Premium, Refi Credit, Late and Interest Paid", further evidence shows on 10 September 2008 Scar's FHA mortgage insurance was endorsed by HUD,

c. pa3 line under "Loan Processing Information" entitled "Endorsement Date" and put into place on the mortgage.

***13** d. Scarr's in record evidence shows the closing company filed the mortgage document of 26 August in Fayette County on Scarr's home on 04 September 2008 and certified the closing, funding and filing of mortgage complete, Answer to Summary Judgment 26 June 2014, Exhibit J, Mortgage, AppellantApp. Vol.,Ex.J.

CC. Scarr Exhibits UU through ZZ, AppellantApp.Vol.06,Ex.UU-ZZ, and Exhibit AAA, AppellantApp.Vol.07,Ex.AAA,pa.1:

a. These FOIA records of HUD informed that Plaintiff Chase, had turned the subject loan of Scarr into HUD in May 2015 under the Accelerated Claims Disposition, enacted as Section 601 of the United States Congress Appropriations Act for Fiscal Year 1999, hereinafter "601" Exhibit pa.5, hereafter AppellantApp.Vol.06Ex.WW, third row up from bottom of the Delinquency History matrix "Prequalified for 601";

b. Chase applied for, Exhibit WW AppellantApp.Vol.06Ex.WW,pa.3 bottom of page under Loan Status continued on pa.5 line entitled Insurance Termination Type "Assignment of Note for Insurance Benefit (19)" and line entitled Termination Process Date "10 July 2014";

c. Chase collected its FHA mortgage insurance claim of $194,188.34 under the HUD 601 program on 10 July 2014 with said payment certified on 13 July 2014, Exhibit WW AppellantApp.Vol.06,Ex.WW,pa.5 bottom of page entitled Claim History;

***14** d. Chase under limited power of attorney for HUD negotiated the loan to HUD and Chase completed the assignment of the subject Mortgage to HUD in Ouachita Parish Louisiana on 15 July 2014 under its Participating Servicer Agreement, herein after "PSA" with HUD that is subject to currently open discovery request of Scarr, AppellantApp.Vol.0*B,Ex.XX,pa.5.

e. The "Note" put forth by Chase to HUD under this program as part of the HUD Single Family Loan Sale Program AppellantApp.Vol.9D,Ex.25, and sold by HUD in the 11 June 2014 note auction AppellantApp.Vol.06,Ex.XX,pa.5 - Ex.YY,pa.2,#6 and was acquired by LSF9 Mortgage Holdings LLC "LSF9" AppellantApp.Vol.06,Ex.YY, pa.1-3-3,#12, registered in the State of Delaware under that program with part of the intent of that program to maintain a moratorium on foreclosure for 6 months following completion of acquisition of the loan by the new loan owner to provide neighborhood stabilization goals and perhaps allow the new mortgagee to effect other outcomes than foreclosure.

f. On 10 July 2013 Chase had certified receipt of the funds from HUD and certified to HUD AppellantApp.Vol.06,Ex.XX,pa.3, "Line Settlement Date 07/10/14", had negotiated the "Note" to HUD and subsequently made a second assignment to LSF9 Appellant, App.Vol.06,Ex.WW,pa.3,#12 top page, under its Participating Servicer Agreement "PSA", sometimes referred to as P-Servicer, AppellantApp.Vol.9D,Ex.26,29, contract with HUD. HUD strictly applies the PSA under the terms of the Fed. False Claims Act and notice certification was by Chase was made to HUD as to that law.

***15** g. On 15 July 2014 Chase assigned the Mortgage to HUD, Scarr Exhibit AAA, AppellantApp.Vol.07,Ex.AAA. Thereby, Chase no longer owned the loan nor was assigned the "Note" or "Mortgage" on or before 15 July 2014

DD. Before hearing on T.R.59 AppellantApp.Vol.09C,Ex.13 Scarr made a T.R.60 AppellantApp.Vol.09C,Ex.15 Motion AppellantApp.Vol.06 on 08 October 2014, "Motion T.R.60 AppellantApp.Vol.09C,Ex.15, Relief From Judgment and Error, Reverse and Entry of Summary Judgment in Favor of Defendant and Motion to Clear Property Record". At beginning of T.R.59 hearing the Court ruled the T.R.60 motion would be heard separately.

EE. On 27 October 2014, the Court made its Order Setting Hearing on Defendant's T.R.60 Motion for Relief from Judgment, at 2:00PM on 20 November 2014.

FF. Scarr Moved the Court in a Motion for Enlargement of Time / Continence of T.R.60 Hearing and for Motion to Compel Discovery on 07 November 2014 AppellantApp. Vol. 07,pa. 1-19.

GG. The Court, Order Granting Motion for Continuance of T.R.60 Hearing to 18 February 2015 and Granting Plaintiff Time Within Which to Respond to Motion to Compel Discovery, 18 November 2014.

HH. Chase moved the Court on 24 November 2014, Plaintiff's Objection to Defendant's Motion to Compel Discovery and Motion the Strike.

II. Scarr T.R.60 Motion is that Chase both lost its material facts and lost the standing to foreclosure Scarr alleged loan based turning in and assigning the mortgage loan to HUD, under insurance subrogation of satisfaction of the debt by the insurance payment. Chase made no effort to inform the Court or Scarr of these change of facts, nor submit to ***16** substitute plaintiff, neither HUD nor LSF [purchaser of the mortgage loan in controversy from HUD on 11 June 2014] nor anyone else including the new servicer AppellantApp.Vol.06, Ex.YY,pa.3 Caliper Home Loans Inc. "Caliper". In fact, Chase and its attorneys represented to the Court at T.R.59 hearing and afterwards in answer to Scarr pending T.R.60 Discovery Motion of 07 November 2014 it both still owned the mortgage loan at summary judgment, was owed money by Scarr refer, and claimed it held with power to enforce the alleged original promissory note, even at summary judgment hearing claiming said alleged note was in the Chases attorney's possession at the hearing, despite failing to present said note into evidence. Chase obtained Final Judgment knowing its material dispositive facts had changed without disclosure to neither the Court nor Scarr.

JJ. At no time did Chase place the original "Note" of 26 November 2008 in evidence.

Statement of Facts, Appellant App.Vol.02 reference to pages set below:

1. Scarr Defendant/Appellant is a resident of Indiana and a consumer, pa5,#7.

2. Appellant Scarr resides at 328 N. Courtney Drive, Connersville, IN 47331, property subject to this lawsuit for Complaint on Note and Decree of Foreclosure, pa.5,#6.

3. United States Secretary of Housing and Urban Development, "HUD" manages, regulates and insures all FHA insured mortgage loans in the United States, "HUD Loan" pa.6,#9.

4. SurePoint had offices in Louisville, Kentucky, pa.7#13; its agent Vanessa Burch of Detroit Michigan pa.7#12, and; principle Bryce Malone of Louisville pa.9#15, Kentucky were certified as licensed by the State of Indiana as loan brokers AppellantApp.Vol.02Ex.Z, and by FHA AppellantApp.Vol.IlT,ab.Ka,pa. top of page ***17** *#20056490,* and under Secretary of Housing and Urban Development to broker FHA insured loans, and were expert providing service to the public in that capacity, during 2008.

5. SurePoint was not licensed as a bank / Depository Institution by the State of Indiana in 2008, AppellantApp.Vol.02,Ex.YbH,pa.1,para

6. Fayette County Abstract Company Inc. of Connersville, IN, "FCA"; its closing agent Patricia Sizemore; "Tricia", and; principal Jane Beaver, "Jane" are licensed by State of Indiana to conduct mortgage closings, and as public notaries during 2008 to the present, and are expert in said closings AppellantApp.Vol.05,Ex.II,pa.8.

7. Chase is a Nationally Chartered Bank operating in the State of Indiana, during 2008 through the present, and is an expert in the banking and **financial** marketplace.

8. Scarr originally applied on or about 28 July 2008 for a FHA insured mortgage loan on his home at 328 N. Courtney Drive, Connersville, Indiana 47331 with Theresa Alexander of Wells Fargo Home Mortgage, "Wells Fargo" located in Rushville Indiana AppellantApp.Vo1.03,Ex.amendXpa.lpara.4; FHA fees were paid by Scarr and the loan was approved, and; the cash out to Scarr was a little over $40,000.00, AppellantApp.Vol.05,Ex.HH,pa. 1.

9. After starting the loan with Wells Fargo, Scarr applied through Lending Tree online loan search to check rates and terms. Later a loan broker for SurePoint, Vanessa Burch of Detroit Michigan made an unsolicited phone call to Scarr, claiming SurePoint could better the deal Wells Fargo offered, and Scarr made application to SurePoint in addition to Wells Fargo AppellantApp.Vol.03, Ex.,amendX,pa.l.

***18** 10. On or about 05 August 2008 Scarr applied to SurePoint, was pre-approved for a loan including approximately $60,000.00 cash out at lower fees, AppellantApp. Vol.05,Ex.HHapa.1/AppellantApp.Vol.01,Ex.KKa,pa.1

11. Scarr changed lenders, and transferred the FHA insured loan to SurePoint in a Fax to Kelly Beck at Wells Fargo on 11 August 2008 AppellantApp.Vol.05, Ex.HHc-HHd.

12. Beginning with Scarr 05 August 2008 application for a FHA insured mortgage loan a confusing process of four separate loan applications was used by SurePoint, "Applications" and Good Faith Estimates, and "GFEs" Faxed to Scarr including a last one on 26 August 2008 just prior to closing AppellantApp.Vol.01,Ex.KKa-KKa,pa.1-19, sub-issues facts:

a. On 20 August 2008 Scarr, in a Fax, expressed doubts as to loan broker Vanessa Burch as the loan funding net less than $40,000.00 AppellantApp.Vol.05, Ex.HHd-HHe.

b. On 21 August 2008 SurePoint caused funding of $1196,222.00 to be transferred to FCA escrow account from Chase AppellantApp.Vol.01,Ex.Q,pa.1-2/ AppellantApp. Vol.05,Ex.II,pa.2,#4.

c. At some point Vanessa Burch and Scarr agreed to set closing for the loan on 26 August 2008 AppellantApp.Vol.03,Ex.amendXpa.2para.2.

d. SurePoint on 26 August 2008, shortly before closing for the loan Faxed to Scarr a final Application to sign pre-dated to 26 August 2008 and a GFE to sign pre-dated to 21 August 2008; both showing a total loan amount of $196,222.00.

***19** i. The Application Faxed on 26 August 2008 showed net cash out to Scarr of $40,044.43, and Scarr signed and returned it AppellantApp.Vol.01,Ex.KK, dpa.2-8, signature last page.

ii. But the GFE showed net cash out to Scarr of $38,793.10, and Scarr did not sign the GFE due to the cash proceeds him were divergent and the fact the GFE showed less than $40,000.00 AppellantApp.Vol.05,Ex.KKd,pa.1.

iii. Vanessa Burch directed Scarr to go to the closing as SurePoint say the problems would be fixed then, AppellantApp.Vol.03,Ex.amendX,pa.2para.3

13. The HUD mortgage loan closing for SurePoint was held at FAC on 26 August 2008, resulting in an incomplete mortgage loan AppellantApp.Vol.05,Ex.IIpa.2-4, anws.3-14.

a. At closing on 26 August 2008 Scarr executed, dated and delivered to SurePoint a mortgage document, “Mortgage” AppellantApp.Vol.05Ex.JJapa. 1-7.

b. SurePoint did not submit a promissory note for Scarr to sign as part of the mortgage loan closing, AppellantApp.Vol.05,Ex.KKa,pa.1-3.

c. Scarr signed a Closing RESPA HUD-1 on 26 August 2008 showing a loan total of $196,222.00 and cash out to borrower of $39,363.93 differing from the Application he signed an hour earlier by approximately $700.00, and also varying from the unsigned GFE AppellantApp.Vol.05,Ex.MMb,pa.3-5.

d. The 26 August 2008 the “Mortgage” transaction did not comply with HUD regulations, including closing 4155.1rev.5 2003 AppellantApp.Vol.9D,Ex.24:

***20** i. The Application, GFE and RESPA HUD-1 did not match in accounting for loan accounting AppellantApp.Vol.01,Ex.KKd,pa./ AppellantApp.Vol.05,Ex.MMb, pa.3-5.

ii. The “Mortgage” was made without a note document submitted to Scarr AppellantApp.Vol.05,Ex.KKa,pa.-3, AppellantApp.Vol.9D,Ex.24,para.3-10A4

iii. Improper disclosure of a mortgage loan under both RESPA and TITLA due to missing note document.

14. On Scarr on Friday 29 August 2008 signed and dated the “Notice of Cancellation” for the 26 August 2006 incomplete mortgage loan, and his mother mailed it that day to SurePoint AppellantApp.Vol.05,Ex.HHf, pa.1-HHg,pa.l.

15. On Tuesday 02 September 2008 SurePoint issued through its agent FAC $196,222.00 on Scarr behalf without a loan in place AppellantApp.Vol.05,Ex.MMa, pa.2.

16. The mortgage loan transaction of 26 August 2008 closed with HUD:

a. On 02 September 2008 SurePoint issued a FHA Closing Certification to HUD AppellantApp.Vol.01.P stating the mortgage loan of Scarr was complete; it held all necessary documents signed and dated; the funds had been disbursed according to the RESPA HUD-1 AppellantApp.Vol.05,Ex.MMb,pa.3-5; the loan closed, and;

b. SurePoint closing instructions instructed its agent FAC to file the "Mortgage" as a lien on Scarr home Property Record maintained by the Fayette County Recorder AppellantApp.Vol.05,Ex.HH,pa.1.

***21** 17. On 02 September 2008 HUD received the previously prepaid Scarr's mortgage insurance upfront payment from SurePoint, AppellantApp.Vol.06,Ex.WW, pa.3, Loan Processing Information, line Upfront Received Date 09/02/08.

18. On 09 September 2008 HUD received the completed FHA loan paper endorsement package from SurePoint, and on 10 September 2008 HUD endorsed Scarr FHA Mortgage Insurance putting it into effect, AppellantApp. Vol.06,Ex.WWpa.3, Loan Processing Information, Endorsement Package Received 09/09/08 and Endorsement 09/10/08.

19. Between 04 and 08 September 2008 Chase acquired ownership from SurePoint an incomplete mortgage loan, consisting of the "Mortgage" Scarr executed on 26 August 2008, AppellantApp.Vol.0,Ex.C-E:

a. The transfer or assignment of the "Mortgage" was completed on 01 October 2008 at time first payment was due under the terms of the "Mortgage" AppellantApp.Vol.01,Ex.C,pa.2,para.2, top line.

b. Vera Scarr was induced to make payments to Chase by information and belief created by the recording of "Mortgage", AppellantApp.Vol.01,Ex.J,pa., top righthand corner filing stamp, by SurePoint in the Property Record in Fayette County on Scarr home; and notice of change of ownership servicing "letters" from Chase and SurePoint directing Scarr to pay money to Chase, and phone calls with both Chase and SurePoint, AppellantApp.Vol.01,Ex.C-E.

c. All payments were erroneously made to Chase by Vera Scarr, Scarr's **elderly** currently 82-year-old mother, from her personal bank account starting with the ***22** first payment of 01 October 2008 continuing without interruption through 01 June 2013:

i. AppellantApp.Vol.01,Ex.RRa,pa.3,CkNo4958,

ii. AppellantApp.Vol.01,Ex.RRb,pa.8,CkNo.4966, and

iii. AppellantApp. Vol. 01,Ex.RRc, pa.13,CkNo.4981.

20. SurePoint never applied to Scarr under the terms of Compliance Agreement AppellantApp.Vol.Ex.M or Omissions and Errors / Compliance Agreement Scarr signed on 26 August 2008 AppellantApp.Vol.01,Ex.N for correction errors or of omission before transferring and assigning the incomplete loan of the 26 August 2008 transaction with Scarr.

21. SurePoint was able to sell and assign the incomplete loan to Chase without correction of errors or omissions terminating the reason for contracts after the effective date of the transfer of the "Mortgage" loan of 26 August 2008 on 01 October 2008, AppellantApp.Vol.01,Ex.E,pa.2 bottom middle of page.

22. There was no agreement between Chase and SurePoint transferring the compliance agreements.

23. On 25 November 2008 Tricia asked Scarr in to FCA to sign documents on 26 November 2008, AppellantApp.Vol.01,Ex.B,pa.1,para.7,linel.

24. Scarr believed he would receive the $700.00 due him when he went into FCA AppellantApp.Vol.01,Ex.B,pa.1,para.2,line2.

25. Scarr to came into FCA on 26 November 2008, AppellantApp.Vol.01,Ex.B,pa.2, para.1

a. On 26 November 2008 at FCA, Tricia submitted a form document entitled “Note” made to SurePoint to Scarr for his signature.

***23** b. Scarr asked questions of Tricia on basic terms of the ‘Note”, reasons for submission of the ‘Note” to Scarr, and Tricia did not respond.

c. Scarr read, executed and dated the “Note” to 26 November 2008 for Tricia.

d. No mortgage document was submitted to Scarr on 26 November 2008 to secure the “Note” AppellantApp. Vol.05,Ex.II,pa.5,#17.

e. FCA submitted no HUD closing documents on 26 November 2008 with the ‘Note” for Scarr signature AppellantApp.Vol.05,Ex.KKb,pa.3.

f. No Certifications were made to HUD or FHA from the closing.

g. No corrected GFE or loan Application was submitted to Scarr.

h. FAC has no record of creating a RESPA HUD-1 for the transaction AppellantApp. Vol.05,Ex.II,pa.6,#21

i. No compliance or errors/omissions compliance agreements or releases from previous compliance agreements were tendered to Scarr.

j. No agreement was submitted to Scarr to combine the 26 August 2008 closing to or “Mortgage” signed thereon and with the “Note” of 26 November 2008.

k. No disclosure or agreement was made as to the “Note” signed stating it was to be transferred to Chase.

1. No disclosure or agreement informing that payments were to be made to Chase.

m. No “Notice to Cancel” submitted or presented to Scarr, and he was not informed of a right to cancel in association with the execution of the “Note” or as to the “Note” transaction.

n. Scarr asked Tricia for the missing $700.00; Tricia informed she did not have it nor know where it was AppellantApp. Vol.01,Ex.B,pa.2,para.1,lines 9-11.

***24** 26. Later on 26 November 2008:

Scarr called SurePoint inquiring after the missing money and they informed him they had nothing to do with either his loan; he had previously received all money he asked about, and they had sold and assigned the loan three months before to Chase AppellantApp.Vol.01,Ex.B,pa.2,para

27. Scarr never received any money, other consideration or benefit as to the “Note” of 26 November 2008 AppellantApp.Vol.05Ex.II,pa.5,#19.

28. No evidence Scarr had contacts from SurePoint after 26 November 2008.

29. No evidence that Scarr notified by either a RESPA or TITLA notification of transfer, sale or assignment of the "Note" to Chase following its execution on 26 November 2008.

30. Written terms of both the 26 August 2008 "Mortgage" AppellantApp. Vol.05, Ex.JJa,pa.,para.,lines9-10 debt is evidenced by Borrower's note dated the same date as this Security Instrument," and the 26 November 2008 "Note" AppellantApp.Vol.05,Ex.JJb,pa.2,para.3, "Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this note and called the 'Security Instrument' are exclusionary, both refer to having been made on or to the same date but have divergent dates by over 3 months.

31. FAC kept the 26 August 2008 and the 26 November 2008 transactions in their files as two separate transactions AppellantApp.Vol.05,Ex.II,pa.6,#22.

32. The 26 August 2008 and the 26 November 2008 are two separate transactions.

33. SurePoint through MERS assigned the "Mortgage" to Chase.

***25** Facts, After Motion for Summary by Chase:

34. After making Motion for Summary Judgment on 28 April 2014 in May 2014 Chase submitted a HUD "601" Participating Servicer Agreement "PSA" and Self Certification Package "SCP" to claim Scarr FHA mortgage insurance AppellantApp. Vol.06Ex.WW,pa. 5,Table,row5,column5,6.

35. In May 2014 HUD accepted the alleged mortgage loan for disposition under the HUD Distressed Asset Sales Program "DASP" by "601" assignment.

36. Under the PSA agreement HUD granted Chase a limited power of attorney to complete two assignments for HUD on a specific timeline, subject to a verified statement by Chase under the United States False Claims Act:

a. First to HUD by Specific endorsement,

b. Second LSF9 by Specific Endorsement

37. Chase assigned the "Note" to HUD under the PSA agreement, and HUD held the "Note" of Scarr.

38. The intent of the DASP was to:

a. Stabilize Neighborhoods.

b. Recover HUD partly HUD FHA insurance payouts.

c. Provide a moratorium on foreclosure with the new owner to allow him to negotiate with the Homeowner for more favorable terms than HUD could offer.

39. On June 11, 2014 DASP auction HUD sold the "Note" of 26 November 2008 to LSF9 Mortgage Holdings LLC of Delaware AppellantApp.Vol.06,Ex.YY,pa.2,para.#6, line2, and lines 7-8 Had this loan not been included in the note sale, it would have gone to foreclosure."

***26** 40. On 10 July 2014 HUD paid the FHA mortgage insurance to Chase AppellantApp. Vol.06,Ex.WW,pa.5, “Claim Information,” “Date Processed 9/10/14”, “Date Paid 9/13/14”, and thereby triggered the completion of the assignment by Chase of the “Note” and “Mortgage” to HUD.

41. On 13 July 2014 Chase certified to HUD they had received the funds and completed the assignments of the “Note” and “Mortgage” to HUD.

42. On 15 July 2014 Chase assigned the “Mortgage” to HUD in Ouachita Parish Louisiana AppellantApp.Vol.07,Ex.AAA,pa.1,para.4,linel and para.5,linel.

43. On 15 July 2014 Chase submitted verified Answers to Interrogatories of Scarr, stating as of the 15 July 2014, AppellantApp. Vol.05,Ex.AA,pa.1-3:

a. Chase owned the loan pa.3,#5

b. Chase owned the note pa.2,#4

c. Chase received the note by “specific” [Special] endorsement from SurePoint, pa.2,#2

d. Chase held the “Note” pa.1,#1 and pa.2,#2

All were untrue on 15 July except we must accept Chase had received the note by specific endorsement at some point prior.

44. On 30 July 2014 Summary Judgment before Special Judge of Fayette County Superior Court, hearing held at Wayne County Superior Court #2: Chase attorneys claimed that Chase was owed money, held a note, was assigned a mortgage and owned Scarr's loan, all untrue, AppellantApp.Vol.06Ex.WW,pa.4 under “Delinquent Information.”, line “Delinquent Status” “49 (Assignment Completed).

***27** 45. On 01 August 2014 Special Judge issued a Final Judgment and Decree of Foreclosure of Real Estate Against Scarr:

a. Court granted equitable mortgage by ruling Scarr “ratified the loan,” and

b. Court granted Judgment to Chase for $200,649.11.

46. As the “Note” did not exist until 26 November 2008 there was No endorsement on “Note” prior to Chase soliciting the first payment AppellantApp.Vol.05Ex.JJb,pa.3 notice unsigned endorsement, in violation of HUD, RESPA and TILA without a loan in place and “Note” and “Mortgage” bifurcated three times:

a. First, incomplete loan “Mortgage” was assigned by SurePoint to Chase in early

September 2008 months prior to existence of “Note”

AppellantApp.Vol.01Ex.E,pa.2,para.1,lin. And

AppellantApp.Vol.05Ex.AA,pa.2,#3.; and

b. Second, Chase under Participating Servicer Agreement “PSA” with HUD Chase granted limited power of attorney for HUD for negotiation, wherein Chase assigned the loan to HUD AppellantApp.Vol.06,Ex.WW, top line, “Insurance Termination Type:

Assignment of Note for Insurance benefit" to collect the FHA mortgage insurance after and completed the assignment of the "Mortgage" on 15 July 2008 but Chase claims to hold "Note" Summary Judgment hearing;

c. Third at time Chase assigns, under the PSA, loan to LSF9 under the limited power of attorney for HUD for negotiation.

***28 Summary of Argument.**

Simply in law and as to fundamentals of a HUD regulated mortgage the alleged mortgage loan owned by Chase of Scarr does not exist.

The alleged mortgage loan is no good having been made without a note attached to it forming a loan as the dates of the documents don't match up nor the time they were created. Along with erroneous accounting from the beginning of any alleged loan the Chase simply did not have a case that rose to a standard of pleading sufficient to prevail as movant on a motion for summary judgment or let lone meet a standard of pleading to bring such motion.

The Court's acceptance and ruling of Ratification to formulate a mortgage loan and base a judgment of foreclosure has no basis in fact or law. The argument for a ratified mortgage stands in opposition to Chase having a note and mortgage keyed together to form an enforceable contract defeating its pillars of determinative fact to form a mortgage loan.

The claimed "Note" is not either a negotiable instrument nor an enforceable contract for a promise to pay to support a HUD mortgage loan. There was not a meeting of the minds, intent to contract by the parties, no consideration given or benefit derived other than to a third unrelated party to the alleged contract, namely Chase, and both parties to the Contract disavowed it. In fact SurePoint never received payment, asked for payment nor could legally accept payment as a bank in Indiana at time of execution making it not an instrument.

Chase never entered into evidence the original "Note" only a verified copy at time of complaint AppellantApp.Vol.01,Ex.I adopted from Chase Exhibit B of Complaint, nor at any time displayed it to the Court or Scarr. It was plaintiff's responsibility to bring his evidence into the record. Chase erroneously claimed money owed and received Final Judgment against Scarr for $200,649.11, simply by acquiescence of the Court to Chase demands.

***29** Prior to Final Judgment Chase had already turned the loan into HUD under the "601" assignment program, applied for and received full and certified accepted complete payment of $194,189.34 on Scarr's FHA mortgage insurance over two weeks before Summary Judgment. At time of Summary Judgment, Chase did not hold nor have right to enforce the "Note" nor "Mortgage" as HUD held both by contract, law and fact. The only relation Chase held to either document was by its PSA with HUD to act in a Limited Power of Attorney capacity for HUD to complete two negotiations of the alleged loan for HUD, and secondly to LSF9 again for HUD. Chase held nothing. There is no evidence HUD granted Chase further powers to complete a foreclosure. In fact the intent of the DASP program was to save the home and forestall foreclosure, AppellantApp.Vol.06, Ex.YY,pa.2,para.#6,line 8-9.

Thereby, Chase lost standing to foreclose.

Argument,

1. Standard of review for Summary Judgment under T.R.56, AppellantApp.Vol.09C,Ex.13 referenced as stated in Lacy-McKinney v. Taylor, Bean, & Whitaker Mortgage Corp, 937 NE2d 853 Ind.Ct.App. (2010) [1] ,

a. It appears the challenge in Indiana in Summary Judgment as to this case is determining just who shall bear the burden of proving a negative, movant Chase or non-movant Scarr. Chase claims a "Prima Fascia Case" supporting Foreclosure. By convention of law under T.R.56 AppellantApp.Vol.09C,Ex.13 the burden to disprove then goes to Scarr. Generally the burden

its initially on the movant to prove its evidence supports its claims. The burden on the movant ***30** Chase was to show the divergent dates of the "Mortgage" and "Note" despite the stated terms of the respective contracts keying them together by date and time of making were either erroneous or immaterial. If that could be meet only then Scarr would have to either disprove the documents or that the dates and time were actually divergent.
b. The Indiana Supreme Court in Jarboe v. Landmark Community Newspapers, Inc., 644 N.E.2d 118, 123 (Ind. 1994) AppellantApp.Vol.09A,AUT.2, found that "Under Indiana's standard, the party seeking summary judgment must demonstrate the absence of any genuine issue of fact as to a determinative issue, and only then is the non-movant required to come forward with contrary evidence."

c. Generally the basic evidence of note and mortgage in a foreclosure comes clothed in the cloak of presumption of validity. Usually, agreements supporting a foreclosure are instruments, mortgage and note, that may be routinely assigned in commerce, wherein to presume invalidity is bad faith, as doing so would negate the benefit of negotiability conferred under law. Furthermore, in a HUD loan the requirements and certifications made as to closing a FHA insured loan are such to preclude error as to the fundamentals of a loan, and they form law as to those requirements being part of the Federal Register and Regulation. In a foreclosure action this forces the non-movant to prove a negative, arguably, not the intention of T.R.56 AppellantApp.Vol.09C,Ex.13. Usually, that is the conundrum for a defendant in foreclosure, and why the plaintiff rushes to apply for summary judgment.

***31** d. Movant Chase in T.R.56 Motion did not meet its initial burden of fact wherein its designated evidence: "Note" of 26 November 2008 AppellantApp.Vol.01,Ex.I and "Mortgage of 26 August 2008 AppellantApp.Vol.01, ExJ [both adopted from Chase Exhibit B and D] had materially conflicting hand written dates that were observable on casual inspection on the face of the documents, handwritten next to the signatures, Ind.Code§26-1-3.1-113 and 114, AppellantApp.Vol.9C,Ex.18-19, yet Chase provided only pleadings in its Complaint on Note and to Foreclose Mortgage on Real Estate, "Complaint", that *both were dated 26 August 2008* as to this issue, and Chase maintained this stance through the case. Perhaps Chase thought it is against the odds for anyone to read the documents, or do little more than scan the Complaint, and accept Chase pleadings of facts.

e. Other than pleading a fabrication that the "Mortgage" and "Note" were of 26 August 2008 Chase could only argue ambiguity of the divergent dates in his complaint. As the contracts in question were both written contracts and instruments, wherein unambiguity is assumed, to insert ambiguity and parole evidence claimant Chase would have to both view the contracts piecemeal as to the respective terms and thereby ambiguously where such ambiguity would kill the instruments effectiveness as a loan. Referring to GEORGE UZELAC & ASSOC. v. GUZIK 663 N.E.2d 238 (1996) AppellantApp.Vol.09AAUT3, "However, if the firm desires terms to be construed differently than written, the contract does require construction. Ambiguous contracts are construed against the drafter. *See Fresh Cut, Inc. v. Fazli, 650 NE.2d 1126*, 1132 (Ind. 1995) AppellantApp.Vol.09AAUT.5.... Also, when examining a contract it is viewed ***32** as a whole, not each item in isolation. *Riffle v. Knecht Excavating, Inc.*, 647 N.E.2d 334, 339 (Ind.Ct.App.1995) AppellantApp.Vol.09AAUT.5. Thus, the firm's position that only the obligations it intended to impose upon Uzelac are proper is not sustainable whether the contract is viewed as ambiguous or unambiguous." Thereby, without inserting the fabrication that the "Mortgage" and "Note" were dated to 26 August 2008 in its pleadings Chase would have to prove a negative against his most basic evidence of a mortgage loan, its evidence of a mortgage loan Chase Exhibits adopted by Scarr from the Complaint of Chase.

f. Kader v. State Dept. of Correction, 1 N.E.3d 717, 727 (Ind.Ct.App.2013) AppellantApp.Vol.09A,AUT.6, "Having failed to designate any evidentiary matter in support of its motion on the question of causation, GEO failed to carry its burden of production at the summary judgment stage. Where, as here, the movant fails in its burden of production, the burden did not shift onto Kader as the nonmovant." Similarly, Chase did not meet its production and material burden for Summary Judgment by providing no explanation or evidence explaining the date difference or mitigating the facts or mitigating the provisions of both the "Mortgage", 26 August 2008, AppellantApp.Vol.05,Ex.JJa,pa.1,para.1,lines9-10 would exclude "Note", 26 November 2008, and vice versa AppellantApp.Vol.05, Ex.JJb,pa.2,para.3 from not being keyed together by language and law, in finality "Where terms are clear and unambiguous, they are conclusive and this Court will not construe the contract or view extrinsic

evidence, but will instead apply the contractual provisions." *Ostrander v. Bd. of* ***33** *Directors, Porter*, 650 N.E.2d 1192, 1196 (Ind.CtApp.1995) AppellantApp.Vol.09A,AUT. 7.

g. Although it was not Scarr burden in consideration of the state of the originating evidence of Chase under Kader AppellantApp.Vol.09AAUT.6, Scarr brought forward a gross preponderance of undisputed evidence, Exhibits A through AAA, all standing against Chase, with only Exhibit X AppellantApp.Vol.02,Ex.X,pa.1-3 and amended X AppellantApp.Vol.03, Ex.amendedX,pa.1-2 disputed, and affidavits AppellantApp.Vol.01,Ex.B, pa.1-2 of Scarr as to deviant events in making the alleged loan make the pleadings of Chase as to the alleged loan at least suspicious if not outright fabrications. Scarr brought forth evidence that in its Exhibit B AppellantApp.Vol.01,Ex.B,pa.1-2 and Exhibit T AppellantApp.Vol.02,Ex.T,pa.1, respective affidavits of Scarr and the closing agent Sizemore and affidavits of Beaver owner of the closing company FCA, and company business records proving two transactions AppellantApp.Vol.05,Ex.II,pa.6,#22 not one as Chase claimed, refer AppellantApp.Vol.05,Ex.JJa-MMb:

i. Exhibit JJa - Closing Documents for 26 August 2008 Closing, Affidavit KK and KKa List of Jane Beaver;

ii. Exhibit JJb - Closing Documents for 26 November 2008 Closing, Affidavit KK and KKa List of Jane Beaver,

iii. Exhibit KK - Affidavit Jane Beaver, List of Closing Documents;

iv. Exhibit KKa - List of closing documents for 26 August 2008 Closing, of Jane Beaver;

***34** v. Exhibit KKb - List of closing documents for 26 November 2008 Closing, of Jane Beaver; note a typographical correction was done to the hand written mistakenly labeled Exhibit number KK on page of Appendix to KKb

vi. Exhibit LL - All Closing Instructions to FCA by SurePoint;

vii. Exhibit MM- Affidavit Jane Beaver, verification for Exhibits MMa and MMb;

viii. Exhibit MMa- Closing Final Disbursement Report 04 September 2008, and;

ix. Exhibit MMb- Closing 26 August 2008 RESPA, HUD-1.

All definitively showing the "Mortgage" was made 26 August 2008, AppellantApp.Vol.05,Ex.JJa,pa.7 and Scan AppellantApp.Vol.05,Ex.J,pa.3 was made on 26 November 2008 as shown the face of the documents by divergent hand dated dates with the signatures, the affidavits of the closing company FCA personnel and its business records that the "Mortgage" and separate transactions, AppellantApp.Vol.05,Ex.II,pa.6,#22 Jane Beaver FCA plainly against Chase pleadings of fact. Generally, the Court shall designate the issues or claims upon which it finds no genuine issue as to any material facts. Summary judgment shall not be granted as of course... but the court shall make its determination from the evidentiary matter designated to the court, T.R.56(c) AppellantApp.Vol.09C,Ex.13. Reference to I.C.§26.1-113-114 AppellantApp.Vol.09B,Ex.18-19, as to dates on instruments.

***35** Furthermore, the Court Final Judgment against Scarr on T.R.59 Motion of Correct Errors as to Scarr Exhibit X AppellantApp.Vol.02,Ex.X, pa.1-3 and substitute X amended AppellantApp.Vol.03,Ex.amendX,pa.1-2 [reference inset removed] upholding the earlier Ruling at Summary Judgment, striking said Exhibit X and substitute Exhibit X amended "as nothing more than self serving," following Chase motion to Strike, was incorrect and prejudicial to Scarr as plainly those subsequent affidavits and facts coming to light with his T.R.59 Motion, including verified exhibits were material AppellantApp.Vol.05,Ex.HHa-HHg:

i. Scarr's Exihibit HH, Affidavit of Vera Scarr, 27 August 2014, including:

ii. Exhibit HHa FAX, 04 August 2008;

iii. Exhibit HHb FAX, 08 August 2008;

iv. Exhibit HHc FAX, 13 August 2008;

v. Exhibit HHd FAX, 13 August 2008;

vi. Exhibit HHe FAX, 20 August 2008;

vii. Exhibt HHf FAX, 29 August 2008, and;

viii. Exhibit HHg Notice of Right to Cancel 29 August 2008.

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) AppellantApp.Vol.09A,AUT.8. "We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment." Furthermore, the affidavit was clearly reducible to admissible evidence for trial, referring to above Exhibits HHa-HHg.
These Exhibits were probative and enlightened the facts of the case, as did Scarr's affidavit, and prove the Affidavit Exhibit X is true and based on personal ***36** knowledge of Scarr, and thereby the Court exceeded is discretion in striking Exhibit X the affidavit of Scarr from the record. Furthermore, Scarr was entitled to substitute his amended exhibit X, even after his answer to Chase Summary Judgment Motion as it was a concise 'clarification' of the prior affidavit, and noting the removal of the potentially objectionable content. Thereby it was Error for the Court to exclude either Exhibit X or the later amended X.

h. As a pillar of his supposed "Prima Fascia Case", Chase in complaint and in his Summary Judgment Motion brought forward and verified statement accounting of his alleged loan without specifics AppellantApp.Vol.02,Ex.V,pa. 1-3. This accounting did not account that Vera Scarr made three payments between the 26 August 2008 "Mortgage" and before the 26 November 2008 the "Note" or an alleged loan existed, AppellantApp.Vol.01,Ex.RRa-RRc. Some $4837.47, i.e. $1612.49 x 3, was paid to Chase prior the existence of any note evidencing any loan or any potential of negotiation of the "Note" to Chase, and thereby before a right to payment, interest and/or fees existed. Even viewed in the best light, this clearly should have reduced the principle owed, or loan amount, at time of the signing of the "Note", from that stated on the "Mortgage" document without interest charges. The security interest follows the promise to pay, as does the right to payment, as over centuries it has evolved the maxim, 'the mortgage follows note'. Therefore, without a note in place interest could not accumulate. In this case for either SurePoint or Chase to create a loan it was either necessary to recalculate the amounted borrowed by a reduction of the money already paid at the time the "Note" was actually made; thereby, necessitating canceling the old ***37** mortgage and submitting to Scarr both a new mortgage and note together, wherein both reflected the same adjusted amount owed, if a enforceable loan was the desired goal, as suggested in Scarr's hypothetica's, AppellantApp.Vol.01,pa.55,para.cc. To prevent undue interest and fees being paid, and certainly have an enforceable loan. Here a non-existing note or loan could not have been negotiated from SurePoint to Chase prior to payments made by Vera Scarr, AppellantApp.Vol.05,Ex.AA,pa.2,#2, said payments including interest were not due from Scarr to Chase, until a loan existed and had been negotiated to Chase. Therefore, the verified accounting said Exhibit V with which Chase brought forward Motion of Summary Judgment and later Motion for Summary Judgment was erroneous.

i. Furthermore in totality of the evidence, Vera Scarr made not only three but arguably all 57 payments total based on erroneous accounting starting with the initial payments, and certainly without a loan in existence.

j. In Lacy-McKinney v Taylor, Bean, & Whitaker Mortgage Corp, 937 NE2d 853 (Ind Ct App, 2010) AppellantApp.Vol.09A,AUT.1, this Court found non-compliance with HUD regulation and law was material to a HUD loan. It is material for a HUD loan, as here, that it is subject to RESPA, TILA and HUD regulations, and furthermore; when a lender,

owner or servicer of a HUD loan submits claim for payment and accountings for money owed to any person or as claims before a Court, when that lender does not own, hold or have right to service said loan it is a plain violation of disclosure and law under RESPA. Interestingly, there is no RESPA HUD-1 made for the second transaction, ***38** AppellantApp.Vol.05,Ex.II.pa.6,#21, and the closing company disbursed no funds to Scarr as to the second transaction, AppellantApp.Vol.05,Ex.II,pa.5, #20; without Beaver's affidavits and answers to interrogatories Scarr would be thwarted in proving the negative he did not receive money or other consideration for signing the "Note" document on 26 November 2008. Chase submitted claims and statements to Scarr prior to the existence or negotiation of the "Note" of 26 November 2006 the servicing transfer letters, AppellantApp.Vol.05,Ex.C-E especially Exhibit E, are RESPA required documents as no loan existed this violated RESPA, and later after he had turned the alleged loan in for a mortgage insurance claim to HUD under the Distressed Asset Sale Program "DASP" AppellantApp.Vol.9D,Ex.24, wherein, Chase accepted and certified he had been paid in full. Chase violated disclosure to Scarr:

i. First, Chase claimed it right to enforce a loan nor right to payment prior to existence and negotiation of the "Note" or any potential loan to Chase, was even possible, arguably after 26 November 2008.

ii. Second, the disclosure requirements under RESPA and TITLA were sequentially violated by the submission erroneous statements and accountings showing interest paid from the payments made by Vera Scarr, prior to existence of a right to collect interest, right up until when the Plaintiff submitted to the Court the obviously erroneous accountings, and;

iii. Third, the letters directing Scarr to pay Chase, Scarr Exhibits C-E AppellantApp.Vol.01,Ex.C-E, and subsequent statements mailed were not ***39** only improper and factually inaccurate notifications to Scarr, or at worse erroneous misrepresentations of a debt obligation, and;

iv. Forth, the FHA Closing Certification made by SurePoint to HUD, Scarr Exhibit P AppellantApp.Vol.01,Ex.P,pa.1, that was at least erroneous certification that a mortgage loan and all documentation was in place. This becomes material upon submission to and payment of the HUD mortgage insurance claim.

In light of the above, for whatever reason Vera Scarr, Scarr's **elderly** mother chose to pay Chase, such actions suggesting a least she believed money was owed to Chase, and whether or not this constitutes a constructive or actual fraud under law by Chase is arguable. But the fact that both Chase and SurePoint were licensed experts in making and servicing HUD regulated mortgage loans tips the scale very close to fraud in light of the disclosure laws. However, under Federal Mail Fraud statue it is absolutely a violation, AppellantApp.Vol.01, pa.47-48,para.ss-tt, to solicit money through the mail when no obligation exists.

Therefore, if Chase had truly plead the claims in its Complaint and Motion for Summary Judgment as to the divergent dates on its designated evidence of "Mortgage" and "Note", and in argument the contracts were valid and enforceable, the accountings would have had to have been adjusted and plead to reflect that situation. But Chase clearly did not make effort to mitigate his pleading of the alleged debt owed, to its benefit, as every contract carries with it an implied duty for a non-breaching party to use reasonable care to avoid damages resulting from a breach by the other party. Worse not only was this done ***40** before any "Note" existed and had been negotiated to Chase but also after Chase turned the alleged loan into HUD for the mortgage insurance, receiving and accepting payment in full, under the DASP, a program intended to stop foreclosure AppellantApp.Vol.9D,Ex.27,28 and allow Scarr the homeowner opportunity to save his home AppellantApp.Vol.06,Ex.YY,pa.2,para.#6,lines8-9, yet Chase without either ownership or right to enforce based on the "Note" and "Mortgage" it no longer owned, or held rights to enforce under foreclosure, AppellantApp.Vol.07,Ex.AAA.

Even in dissent on Jarboe, AppellantApp.Vol.09A,AUT.2, Justice Shepard, "I believe there is no reason to go to trial or prolong a proceeding if undisputed evidence establishes that an *essential claim* or defense is doomed to failure" herein Chase in its Complaint designated evidence that showed, upon due consideration, its pleadings to be materially defective, even without any of the evidence of Scarr. Justice Shepard, continuing "Therefore, summary judgment is proper if, after *sufficient opportunity*

for discovery, the movant can establish that the non-movant will not be able to prove an element of its claim or defense on which the non-moving party bears the burden of proof."

k. But in this case the Court simply acquiesced to Chase, and its objections to Scarr's discovery requests at every turn and his application to the Court for help to compel discovery, whereupon 27 May 2014 'the Court Rules it does not get involved in discovery at this point in the proceedings,' this is a violation of the discretion of the Court in light of Chase's general objections to every discovery request of Scarr, "The rules of discovery are designed to allow a liberal discovery ***41** process, the purposes of which are to provide parties with information essential to litigation of the issues, to eliminate surprise, and to promote settlement. Discovery is designed to be self-executing with little, if any, supervision or assistance by the Court. However, when the goals of this system break down, Ind. Trial Rule 37 AppellantApp.Vol.09C.Ex.37 provides the court with tools to enforce compliance" Hatfield v. Edward J. DeBartolo Corp., 676 N.E.2d 395, 399 Ind.Ct.App. (1997) (citations omitted), trans. denied AppellantApp.Vol.09A, AUT.9. Much of defense discovery was to relationships and communications between Chase and the originator SurePoint could be damaging to Chase and its case; allow Scarr to make and prove counterclaims, and worse; relationships and communications between Chase and HUD and the real owner of the loan LSF9 would only disprove Chase claims; noting after 13 January 2014 under RESPA Title 6 these communications and relationships are required to be disclosed even to voice recordings.

Clearly, on the most basic face of the claims and pleadings of the Movant Chase could never tie the alleged mortgage loan together with the "Mortgage" and "Note", thereby, the Court ruled in error in either by not finding in favor of Scarr and dismissing the case, or arguably, setting the case for trial as Chase did not meet is most basic burden of proving a mortgage loan.

Final Judgment of Ratification

As Vera Scarr the **elderly** mother of Scarr made the payments on the loan, and she was past 75 years old in 2008, her payment and any acceptance of an implied or express ***42** contract would arguably constitute **abuse** of the **elderly**, particularly considering the state of the alleged loan, there is no evidence: she understood or was informed of potential of her actions, as required by HUD's closing disclosures, nor was Scarr as to the "Note" transaction Exhibit JJb, AppellantApp.Vol.05,Ex.II,pa.1-5, nor, evidence Scarr acknowledged, directed her nor had control of her actions as to payments. Nor had Vera Scar any interest in the property or responsibility under any alleged loan, making any claim through her need to be based writing, Ind.32-21-1-1(2).

The Plaintiff's claim of 11 July 2014 of Ratification of mortgage loan of its Plaintiff's Reply to Defendant's Response to Summary Judgment was made too late to allow Scanrr prepare a response prior to Summary Judgment hearing: response due 27 June 2014. Chase pleadings were based on a multiple conditions president but little explanation of such details, and law, Scan's applied to the Court on 28 July 2014 for Continuance of Summary Judgment and Discovery of Chase as to the new claim, the Court ruled against Scan's just before hearing the Summary Judgment Motion on 30 July 2014. The Court disallowed discovery and continuance, prejudicing Scarr in presenting a defense to the ratification claim.

However, Scanr had plead to the fact that the alleged mortgage loan of Chase was a violation of the Indiana Statue of Frauds, I.C.§32-21-1(5) AppellantApp.Vol.02,pa.32,#48, in his Answer to Summary Judgment Motion. Fundamentally, under that the Indiana Statue of Frauds, mortgage loans are consumer real estate contracts of years, thereby an mortgage loan must be in writing and not an implied nor express contract nor equitable grant, as doing so defeats the purpose of the ***43** instruments negotiability. The alleged loan in question was a HUD insured the mortgage loan and must comply with HUD regulations, as per previously cited Lacy-McKinney v Taylor, Bean, & Whitaker Mortgage Corp, 937 NE2d 853 Ind.Ct.App. (2010) AppellantApp.Vol.09A, AUT.1, including certifications to HUD and notification to the home owner, Scan, none were made, see list of closing documents Exhibit KKb Appellant App.Vol.05,Ex.KKb,pa.3.

The argument of Scan, AppellantApp.Vol.02,pa.32,#48:

"As the closing agent for the Defendant's... mortgage loan origination transaction on 26 August 2008 did not submit for SurePoint... to Defendant a promissory note... supporting a promise to pay the real estate loan transaction violated the Statue of Frauds I.C.§32-21-1-1). AppellantApp.Vol.05,Ex.HHa Synopsis:

Without a promissory note no promise to pay was made and any mortgage signed would be effectively un col lateralized, see In d. Code §26-1-9.1-102, AppellantApp. Vo1.05,Ex.HHa and under I.C.§32-21-1-1 AppellantApp.Vol.05, Ex.HHa would be violated for acts requiring made in writing."

The "triangle of protection" under the law formed by the combination of:
i. A note/promise to pay by law effectively collateralizes or gives the "Mortgage/Security Instrument validity;"

ii. The attachment of the collateral [real estate], to the mortgage/security Instrument by law forms a secured mortgage loan.

***44** iii. The recording of the mortgage/security instrument in the County of the property location perfects a secured mortgage loan and by law allows the enforcement of the loan.

This makes for a complete and enforceable mortgage loan securing a promise to pay. Where the "triangle of protection is broken the loan is not secure and unenforceable.

The claim of ratification is fundamentally against the statement of claim by Chase as to its "Prima Fascia Case", facts and pleadings in its Complaint of 16 December 2013 against Scan, an admission that Chase claim of a complete 'mortgage loan of 26 August 2008' was factually flawed, if that fact was true the claim of ratification by payment would not be necessary. Essentially, where a written contract(s) and HUD insured mortgage loan existed the use of parole evidence to determine the contract basic terms, right to payment, is outside bounds of law, this echo's several previously refeed cases: In Lacy-McKinney, see above, this Court found non-compliance with HUD regulation and law was material to a HUD loan. Here one wonders where and how a "Ratified by Equity" HUD Insured Mortgage Loan Certification is made or regulated by HUD? Perhaps by fraud in the one and only certification of a completed loan made to HUD, Exhibit P AppellantApp.Vol.01,Ex.P,pa.1, without a note in existence? Particularly as to the subsequent mortgage insurance claim made by Chase to HUD, AppellantApp.Vol.06,Ex.WW,pa.4. top of page Insurance Termination Type" Assignment for Insurance Benefits (19).

***45** Ostrander as to contracts, "Where terms are clear and unambiguous, they are conclusive and this Court will not construe the contract or view extrinsic evidence, but will instead apply the contractual provisions", *Ostrander v. Bd. of Directors, Porter*, 650 N.E.2d 1192, 1196 (Ind Ct. App.1995) AppellantApp.Vol.09A,AUT7. The claim of ratification basically defeats the concept of written contracts and law, Statue of Frauds I.C.§32-21-1(5), as to a mortgage loan. Thereby pleading ratification by payment, Chase in making said claim is stating its "Prima Fascia Case" and its foundations of evidence are indeterminate at best, "Mortgage" and "Note", to its case as stated time and again in its complaint and during hearings, and thereby is invited error.

Jarboe v. Landmark Community Newspapers, Inc., 644 N.E.2d 118, 123 (Ind.1994) AppellantApp.Vol.09A,AUT.2, found that "Under Indiana" standard, the party seeking summary judgment must demonstrate the absence of any genuine issue of fact as to a determinative issue, and only then is the non-movant required to come forward with contrary evidence. Here Chase claim of ratification by payment stands against its pleadings of fact, 'mortgage and note of 26 August 2008,' creating genuine issues of fact as to the determinate issues of its own claim to hold an enforceable mortgage loan consisting of the "Note" and "Mortgage" of 26 August 2008, of its Complaint of 16 December 2013. This is an invited error of Chase.

Thereby, as in Kader AppellantApp.Vol.09A,AUT.6, as to production at summary judgment, "Having failed to designate any evidentiary matter in support of its motion on the question of causation, GEO failed to carry its burden of production at the summary ***46** judgment stage. Where, as here, the movant fails in its burden of production, the burden did not shift onto Kader

as the nonmovant." Kader v. State Dept. of Correction, 1 N.E.3d 717, 727 (Ind.Ct.App.2013) AppellantApp.Vo.A,AUT.6. HUD by its agent Chase by effectively arguing ratification against its alleged mortgage loan "Mortgage " and "Note", gave away both the pillars of fact of its "Prima Fascia Case" validity potential, and made the ratification by payment moot as to the alleged HUD mortgage loan, thereby failing to meet its production burden at time of summary judgment hearing and Final Judgment.

Chase claiming Scarr had notice of right to cancel is erroneous in consideration that with the "Note", there was no notification of right to cancel given to Scarr on 26 November 2008, Exhibits JJb, and KKb AppellantApp.Vol.05,Ex.JJb-KKb, as required by a HUD closing, AppellantApp.Vol.9D,Ex.24. And, the "Mortgage" of 26 August 2008 had already been cancelled, reference the verified Notice of Right to Cancel that Scarr executed, Exhibit Hg AppellantApp.Vol.05,Ex.HHg; the mortgage.

Chase submitted the alleged loan to HUD for the insurance proceeds, AppellantApp.Vol.06,Ex.WW,pa.4. top of page "Insurance Termination Type " Assignment for Insurance Benefits (19), the before making the ratification claim. LSF9 having acquired this mess from HUD, HUD acquired by subrogation of insurance, if Chase fails luci causa to provide a pre-foreclosed package to LSF9, the ratification would not transfer from HUD to LSF9 AppellantApp.Vol.9D, Ex.28,B-3. Importantly, Chase transfer of the alleged mortgage loan to HUD under the DASP program Chase was acting as power of attorney for HUD and interim servicer under the ***47** PSA AppellantApp.Vol.9D,Ex.26,29. To avoid confusing the issues any more the party prosecuting the suit is referred to as HUD/Chase. Thereby, at the time HUD/Chase made the ratification claim on the 11 July 2014 it became HUD's argument against the basic loan documents, noting payment of insurance HUD cancelled the Loan as a HUD insured loan, AppellantApp.Vol.06,Ex.WW,pa.4 Termination Process Date 07/10/14" wherein the HUD insurance was cancel by claim, and thereby HUD owed a loan by subrogation that violated its own regulations and the intent of the DASP program. HUD/Chase at summary judgment prosecuted a foreclosure, and thereby HUD/Chase proceeded to obtain a judgment beyond that its insurance value paid out to Chase, $194,188.34 AppellantApp.Vol.06,Ex.WW,pa.5 Claim History "Total column. and a final judgment of $200,649.11 in Final Judgment on 01 August 2014, fundamentally against its HUD's purpose under the DASP. Noting, LSF9 acquired the alleged loan 15 August 2014, after Final Judgment, RESPA notification letter, Exhibit RR AppellantApp.Vol.06,Ex.RR,pa.

> LSF9 paid$122,896.47 AppellantApp.Vol.06,pa.9,para.4,line3 [AppellantApp.Vol.06,Ex.WW,pa.4 Unpaid Principle Balance $184,287.00 x AppellantApp.Vol.06,Ex.YY,pa.2,para.#10 66.68749 from the 11 June 2014 auction to acquire the loan, AppellantApp.Vol.06,Ex.WW,pa.2,para.#7-#8 SFLS2014-2 sold in pool 104. Vera Scarr had already paid Chase over $91,200.00 in payments, and Scarr had prepaid the mortgage insurance thereby accounting for an potential amount owed is indeterminate, and compound by the action of the two previous forbearances, AppellantApp.Vol.01,pa.46,para.mm and ***48** Appel.Vol.0,pa.55, para.aa / AppellantApp.Vol.02,pa.51,para.#90 and AppellantApp.Vol.02,pa.56, para.#95.

This all is divergent to Chase answers to Scarr's interrogatories of 15 July 2014 as to ownership of the loan, clearly misrepresentations, AppellantApp.Vol.05,Ex.AA,pa.2,para.#4 and pa.3para.#5. The pleading of HUD/Chase at Summary Judgment were erroneous as to Chase owning the loan, and whether Chase had right or power to foreclosure for HUD as there is no evidence of agreement between HUD and Chase allowing Chase to foreclose after Chase turned the loan over to HUD. HUD was not a party to the suit, and hid the facts of the insurance transfer of the loan, from both the Court and Scarr Thereby Court was misled and the deception prejudiced Scarr to argue against the ratification argument of HUD/Chase, or know the claimant. Furthermore, HUD/Chase was not originating party to the Suit prejudiced Scarr, nor had it been enjoined and had no standing before the Court, making the Final Judgment to Chase and Error severely prejudicing Scan by the use of the deception using a strawman, Chase, to obtain judgment. These facts were discovered some time after Final Judgment and the subject of the T.R.60 Motion.

Likely, Chase acted on its own without the knowledge of HUD Chase had no standing to continue the suit of foreclosure as it did not own the loan AppellantApp.Vol.06Ex.WW, table center of page showing "Assignment Completed" after reciving $194,189.34, see "Claim History" on same page nor hold the mortgage AppellantApp.Vol.07Ex.AAA.

***49** Going back to the documents a mortgage loan is founded upon, neither experts in mortgage loans SurePoint and Chase, attempted to correct any errors in the situation caused by Scan dating the "Mortgage" and "Note" to the dates he actually signed them, and the result of an incomplete loan. Compliance and the Compliance/Errors and Omissions Agreement contracts, AppellantApp.Vol.01, Ex.M,pa.1 and Ex.N,pa.1, Scan made with SurePoint were not in effect after SurePoint successfully completed transfer of ownership of the incomplete mortgage loan to Chase, on 01 October 2008. SurePoint/ Chase rested for a period of some 5 years before Scan a consumer discovered the situation.

Thereby, HUD/Chase claim of Ratification fails by the inaction of SurePoint in making the incomplete loan without an attempt to correct the fundamental documents evidencing a mortgage loan; Chase accepting the incomplete mortgage loan and soliciting payments from a third party not party of the loan, Vera Scan, and; HUD not reviewing the originating loan certifications and later not supervising Chase as to proceeding to foreclosure against its own regulations under any quality check. SurePoint, Chase and HUD ratified an incomplete and unenforceable loan, after having the forbom of the loans funding to Scan years before, AppellantApp.Vol.01,pa.46,para.mm and AppellantApp. Vol.01,pa.55, para.aa / AppellantApp. Vol.02,pa.51,para.#90 and AppellantApp.Vol.02,pa.56, para.#95. This prevents foreclosure on Scan on the invited errors of all three and prevents foreclosure on Scarr home by operation of estoppel of latches, failure to act in a timely manner to create a mortgage loan, and equitable estoppel as experts knowing better in contrast to the consumer protected status of Scan.

***50 Generally as to the Alleged Loan**

"Mortgage" of 26 August is bifurcated from the "Note" of 26 November 2008, incomplete loan was assigned by SurePoint and accepted Chase months prior to the existence of the "Note". And, the payments starting on 24 September 2008 by Vera Scarr made to Chase were bifurcated from any future "Note", including the alleged "Note" of 26 November 2008:
a. First, the incomplete loan "Mortgage" was assigned by SurePoint to Chase in early September 2008 months prior to the existence of the "Note," wherein, that assignment completed on 01 October 2008, no note in existed, and;

b. Second, Chase under its Participating Servicer Agreement "PSA" AppellantApp.Vol.9D,Ex.26,29 with HUD assigned the loan to HUD to collect the FHA mortgage insurance after Chase having limited power of attorney for HUD for negotiation 2008 completed the assignment of the "Mortgage" to HUD on 15 July 2014 AppellantApp.Vol.07ExAAA, apparently without a note according to Chase;

The "Note" was defective by referring to:

Both a "Mortgage" and the Bank originating it [SurePoint
AppellantApp.Vol.02,Ex.YYb,pa.1,para.3] did not exist in Indiana, and at time Scarr signed the "Note" it was an antecedent debt of a third party "Chase", as; Chase books could not be secured without evidence of a complete mortgage loan, Jackson v. Luellen Farms, Inc., 877 NE 2d 848 Ind.Ct.App.(2007):

***51** a. On the face and terms, "Note" of 26 November 2008 AppellantApp.Vol.05,Ex.JJb,pa.2,para.#3 referred to a mortgage of the same date. On the face and terms, "Mortgage" of 26 August 2008 referred to a note of the same date AppellantApp.Vol.05,Ex.JJa,pa.1,para.1,line9-10 . By contract terms, they were mutually excluding from the actual documents.

b. Accounting for any debt separates the amount potentially owed respectively due the three payments made by Vera Scarr between "Mortgage" and "Note". Jackson continuing, AppellantApp.Vol.09A,AUT.10,pa.16,para.2 starting with "However, the consideration in this case was not a contemporaneous extension... [continuing through end of paragraph] it is gratuitous and cannot be enforced".

The “Note” of 26 November 2014 is not a negotiable instrument.
a. At the time Appellant Scan executed and dated the “Note” as it is unambiguous viewed in light of the “Mortgage.”

b. The “Note” contract was defective in that in its terms it referred to three fatal material errors, at time of execution by Scarr, as to the intention of the parties being ratified by its terms:

i. The “Payee” named on the “Note” was not the actual payee intended by the SurePoint to confer right as the payment for any mortgage loan the “Note” was intended to support, i.e. 26 August 2008 “Mortgage”, and that effectively the right to payment had already been and was directed to Chase by SurePoint. However, as Scan signed the “Note” with SurePoint as payee the intent of Scanrr has to be construed as that.

***52** ii. Neither party intended to obligate Scan to SurePoint on 26 August 2008 as SurePoint did not submit a note for Scan to sign, and Scan did not promise nor sign a Note, in a HUD mortgage loan transaction AppellantApp.Vol.9D,Ex.24 a note and mortgage must be submitted to and signed by the maker at closing, that did not happen due to SurePoint actions.

iii. It is arguable that any party intended to obligate Scan to SurePoint on 26 November 2008, as the SurePoint was not the assignee of even the incomplete mortgage loan nor did SurePoint apply to Scan to sign a mortgage with the note.

iv. SurePoint paid or granted no consideration to Scan, AppellantApp.Vol.05,Ex.II,pa.5,para.#20.

c. SurePoint was the “Paye” on the “Note” but the “Mortgage” had been sold and assigned to Chase, and as payments had already were directed to Chase prior to the existence of the “Note”, anyone including Scan and SurePoint would have to refer to the RESPA required notification private letters from Chase on 08 September 2008 and SurePoint on 09 September 2008 AppellantApp.Vol.01,Ex.C-E, directing Scan to make payment to Chase to know the basic terms of payment as to “Paye” and the the order to pay subject to anther record to know where and who to make payment, importantly, at the time of execution by Scarr, by definition:

i. Ind.Code§26-1-3.1-104 Negotiable instrument Sec. 104. (a) Except as provided in subsections (c) and (d), “negotiable instrument” means an ***53** unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it: Importantly, the promise is conditional of Ind.Code§26-1-3.1-106a(3)

ii. I.C.§26-1-3.1-106 Unconditional promise or order Sec. 106. (a) Except as provided in this section, for the purposes of I.C. §26-1-3.1-104(a), a promise or order is unconditional unless it states:

(1) an express condition to payment;

(2) that the promise or order is subject to or governed by another record; or

(3) that rights or obligations with respect to the promise or order are stated in another record.

d. At time of execution, the note would have to be reconstructed to know where to pay making the contract ambiguous to the facts and arguably the intention of SurePoint it was contract for. Referring to GEORGE UZELAC & ASSOC v. GUZIK 663 N.E.2d 238 (1996) AppellantApp.Vol.09A,AUT.3, “However, if the firm desires terms to be construed differently than written, the contract does require construction. Ambiguous contracts are construed against the drafter. *See Fresh Cut, Inc. v. Fazli,* 650 N.E.2d 1126, 1132 (Ind. 1995) AppellantApp.Vol.09A,AUT.5... Thereby, the “Note” written terms were not complete as to the intension of the parties to the Contract and a note cannot be ambiguous.

e. The "Payee SurePoint" was not a licensed Depository Institution in Indiana, Exhibit Yb AppellantApp.Vol.02,Ex.Yb,pa.1,para.#3, and did not have place of ***54** business in Indiana AppellantApp.Vol.02,Ex.Z,pa.1, in 2008, referring to Note Payee AppellantApp.Vol.05,Ex.JJb,pa.2,para.# Lender and para. #4(B) Place, Jackson v. Luellen Farms, Inc., 877 NE 2d 848 Ind.Ct.App. (2007) AppellantApp.Vol.09App.10, referring footnote #9,pa.10-11, starting line 3 in entirely, and: See First Nat'l Bank v. Grindstaff, 45 Ind. 158, 159, 1873 WL 5407 at *1(1983): Parkinson v. Finch, 45 Ind. 122, 126, 1873 WL 5646 at *5 (1873) "To make a note payable to order or bearer, in a bank in this State, negotiable as inland bills of exchange, it must be payable in a bank in this State which has an actual existence at the time the note is executed. AppellantApp.Vol.09B.

f. Scarr received no consideration of any kind, for his execution of the "Note" document, or at anytime later AppellantApp.Vol.05,Ex.II,pa.5,para.#20.

g. Scarr when signed the "Note" he received a confusing document from SurePoint AppellantApp.Vol.05,Ex.JJb,pa.1, to make payment starting prior to date of the "Note" to SurePoint, not Chase.

h. Scarr never received a RESPA or TILA notification after signing the "Note" to make payments to Chase and SurePoint never issued a demand or even statements.

i. Upon Scarr informing SurePoint by phone of the "Notes" execution AppellantApp.Vol.01,Ex.B,pa.2,para.#3, and asking questions as to a missing $700.00" consideration, SurePoint disavowed the document.

j. Scarr never made payment on the "Note" to SurePoint or anyone else on the "Note".

***55** k. In consideration of Scarr's proposed hypotheticals AppellantApp.Vol.01,pa.46,para.mm and AppellantApp.Vol.01,pa.55,para.aa / AppellantApp.Vo1.02,pa.51,para.#90 and AppellantApp.Vol.02,pa.56,para.#95 of what ought to have been done by SurePoint, an expert, to create note and secured mortgage loan never did or corrected any error, Scarr, is a consumer.

1. Jackson v. Luellen Farms, Inc., 877 NE 2d 848 Ind.Ct.App.(2007) AppellantApp.Vol.09A,AUT.10, recites a similarly confusing situation.

The "Note" of 26 November 2008 is not a valid or enforceable contract against Scarr.
a. At the time of execution the only party the "Note" conferred benefit was Chase a third party not mentioned anywhere on the "Note".

b. No meeting of the minds to terms of a contract as an Application and GFE to ratify a contract, for a HUD regulated loan AppellantApp.Vol.01,pa.Kd,

c. No Intent to contract between the parties to the contract by terms tying the "Mortgage" and "Note" by date did not match the situation.

d. No Consideration in any form conferred upon Scan by his signing the "Note."

On 26 November 2008 Appellant Scan granted the "Note" gratuitously to SurePoint, As similar to the complex situation in Jackson v. Luellen Farms, Inc., 877 NE 2d 848 Ind.Ct.App.(2007).
a. Scan based his action the trust of "Tricia" Sizemore of Fayette County Abstract Company Inc.

***56** b. The payments made by Vera Scarr were not originated or contingent upon the "Note" existence, and started before the "Note" existed.

c. The only discernable benefit of the 26 November 2008 "Note" document was to Chase a third party to the "Note" transaction between SurePoint and Scarr.

Neither the "Mortgage" of 26 August nor the "Note" of 26 November 2008 do secure an identifiable debt owed by Scan.
a. At the time of executing the "Note";

i. The loan funding had already been forborne by SurePoint to benefit of Scarr, AppellantApp.Vol.06,Ex.MMa,pa.2, and

ii. Chase accepted the incomplete loan, solely, consisting of a rescinded "Mortgage" thereby it forbore any debt as to the origination funding it provided to SurePoint, AppellantApp.Vol.01,Ex.Qpa.1-3.

m. "Mortgage" refers to an indeterminate debt as it does not have a promise to pay a loan in the form of a promissory note or "note" attached to it, SurePoint and Chase are experts, if they desired to create a mortgage loan they should have submitted a new clean note and mortgage to Scarr's on 26 November 2008, reducing the principle amount owed by Vera Scarr's payments. AppellantApp.Vol.01,pa.46,para.mm and AppellantApp.Vol.01,pa.55,para.aa / AppellantApp.02,pa.51,para.#90 and AppellantApp.Vol.02,pa.56,para.#95

Chase is Not a Holder with Power to Enforce.

Chase is not a "Holder" with right to enforce the "Note" of 26 November 2008.
***57** a. Chase turned in Scarr's alleged loan to HUD for insurance settlement in May 2014 and accepted insurance payment on 13 July 2014 AppellantApp.Vol.06,Ex.WW,pa.5, "Claim History", AppellantApp.Vol.9D,Ex.25.

b. Chase continued holding the "Note" is in opposition to PSA contract with HUD, AppellantApp.Vol.9D,Ex.26-29.

c. *Scarr was materially harmed by the Court issuing final judgment and not issuing* a "Notice of Cancelation" as to "Note".

c. The divergent terms of the Application, GFE AppellantApp.Vol.01,Ex.Kd as to dates and loan accounting as well as the divergent accounting terms of the RESPA HUD-1 AppellantApp.Vol.05,Ex.MMb do not form a ratified agreement for which to complete a HUD loan.

d. No RESPA HUD-1 for 26 November 2008 AppellantApp.Vol.05,Ex.II,pa.6,#21.

e. The Application, GFE, Mortgage and Note, along with a host of other certifications and documents must be timely completed under HUD regulated loan closings transactions AppellantApp.Vol.9D,Ex.24, and

f. In equity submitting an insurance claim for the FHA Insurance extinguishes future claims by Chase against Scarr by insurance subrogation to prevent unjust enrichment by receiving over recovery for Chase:

i. Over $91,000.00 payments made by Vera Scan;

ii. Receipt of the HUD insurance payment of $194,189.34, and;

iii. The Final Judgment against Scarr for $200,649.11.

***58** The change in ownership then created the problem Chase did not own the alleged loan and in violation of the Participating Servicer Agreement "PSA" and Self Certification Package "SCP" made to HUD, and withheld negotiation to obtain a foreclosure judgment despite the terms of the HUD Distressed Asset Sales Program, "DASP" administered by HUD, and more importantly in violation of the Chase violated the U.S. False Claims Act, as Chase made certifications to HUD with full of knowledge of the act in its "PSA" with HUD:
iv. At time of Complaint 16 December 2014 Chase was assigned and owned the "Mortgage"

v. Shortly after filing motion for Summary Judgment on 28 April 2014 in May 2014 Chase submitted a HUD "601", "PSA" and "SCP" AppellantApp.Vol.9D,Ex.25-29 to claim the FHA mortgage insurance of Scarr AppellantApp.Vol.06,Ex.WW,pa.5 middle page boxes "Prequalified for 601".

vi. HUD accepted the alleged mortgage loan for disposition under the HUD Distressed Asset Sales Program "DASP" by the "601" assignment, AppellantApp.Vol.06,Ex.WW,pa.5 middle page boxes "Assignment Completed"

vii. Chase was required to assign the note to HUD in the PSA agreement, AppellantApp.Vol.9D,Ex.26,29.

viii. In the PSA agreement HUD granted Chase a limited power of attorney to complete two assignments for HUD on a specific timeline, subject to a ***59** verified statement by Chase under the United States False Claims Act, AppellantApp.Vol.9D,Ex.26 and Ex.27.

1. To HUD by Special endorsement,

2. To LSF9 by Special Endorsement

Chase under its Participating Servicer Agreement "PSA" assigned the loan to HUD to collect the FHA mortgage insurance after Chase then only having limited power of attorney for HUD for negotiation, not as a holder or enforcer AppellantApp.Vol.9D,Ex.26-27,29 filed its Summary Judgment Motion on 28 April 2014 in May 2008 and completed the assignment of the "Mortgage" exceeding its power granted by HUD, willfully without assigning the "Note" to HUD on 15 July 2008 if the Chase Attorneys continued claims of "Chase holding the note" are to be believed without the original "Note" in the record, AppellantApp.Vol.06, Ex.ZZ,pa.4,ine4, and; complete assignment for HUD under PSA to LSF9. Chase under the limited power of attorney for HUD for negotiation, wherein if Chase is to be believed it again exceeded its power of attorney under HUD.

Chase lost its ability to Foreclose by equitable subrogation turning the alleged loan it held against Scarr under the HUD Distressed Asset Sales Program, "DASP". Chase by submitting an insurance claim for the FHA Insurance on the mortgage, in whatever state it existed, extinguishes future claims by Chase against Scarr by insurance subrogation to prevent unjust enrichment Chase by receiving benefit twice:
i. First by the receipt of the insurance payment of $194,189.34, refer Exhibit WW, page 5.

***60** ii. Second by the obtaining the Final Judgment against Scarr for $200,649.11 in Final Judgment on 01 August 2014.

Because subrogation operates to prevent such over-recovery, it is considered to form part of the general law of unjust enrichment (i.e preventing a party by being unjustly enriched by pursuing a claim for a loss in respect of which they have already been indemnified).

Furthermore, the purpose of the DASP is to “This SFLS 2014-2 Purchaser Compliance Form will be used by Purchasers to self-certify the Purchaser's compliance with the post sale requirement that for each Mortgage Loan that is occupied by the owner thereof, Purchaser shall avoid finalizing any foreclosure action for six months from the applicable Settlement Date”, AppellantApp.Vol.9D,Ex.28.B-3

Conclusion:

Scarr seeks first to the Indiana Court of Appeals to clear the foreclosure with prejudice against Chase, HUD and LSF9, and secondly to remand so he can now make motions for sanction and counterclaims, against Chase and HUD.

Appendix not available.

Footnotes

1 Bottom page 9,I. **Standard of Review** continuing through middle of page 10

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